

## **DIRECTIVE NUMBER 300-15-12**

**DATE:** February 15, 2013

**TO:** Kansas Department of Labor Employees

**FROM:** Lana Gordon, Secretary of Labor

**SUBJECT:** Performance Review System Appeal Policy and Procedure

1. Purpose. To update written policy and procedure regarding performance review appeals.
2. References: K.A.R. 1-7-10 through 1-7-12 and the DA [website](#).
3. Policy. Any classified employee with regular full-time or part-time status may appeal a performance evaluation rating which is lower than the highest possible rating. For the purposes of establishing an employee's right to appeal a rating less than Exceptional, the ratings Commendable, Proficient and Needs Improvement, shall be considered a rating of Satisfactory. Employees serving a probationary period as a result of a promotional appointment, reinstatement or transfer have the same right to appeal as an employee with regular status, provided the employee had regular status in the class in which they most recently served prior to the promotion, reinstatement or transfer. Employees serving a probationary period as the result of an original appointment do not have the right to appeal a performance review.
4. Procedure.
  - a. Any eligible employee who believes that he/she has been unfairly rated may, within seven (7) calendar days after being advised of the rating, address an appeal in writing to the Secretary or the Secretary's designee. A copy of the appeal shall also be sent immediately to the Director of Human Resources.
  - b. The Secretary or the Secretary's Designee, within seven calendar days following receipt of the employee's written notice of appeal, shall make any changes in the rating deemed appropriate, or appoint a committee of three or more persons to hear the appeal.
  - c. If the Secretary or the Secretary's Designee makes any change in the rating, or adds any comments to the rating form, the rating form shall be returned to the employee to be signed again. If the employee disagrees with the revised performance review, the employee may again, within seven calendar days, file an appeal in writing to the appointing Secretary or the Secretary's designee and the employee shall be informed of that right. If the employee files such an appeal a committee of three or more persons to hear the appeal will be appointed.
  - d. If an appeal committee is appointed to hear the appeal, persons shall be appointed who, in the Secretary or Secretary's Designee's judgment, will be fair and impartial in discharging their responsibilities. One non-voting member shall be appointed to serve as Chairperson of the committee. Before appointing the appeal committee, the Secretary or the Secretary's Designee shall give the employee a reasonable opportunity for consultation on the matter of appointment of the appeal committee.
    1. The appeal committee shall not include the initial rater or raters.

2. Members of the appeal committee shall be officers or employees of the agency. However, the Secretary or the Secretary's Designee may select one or more members of the committee from one or more other state agencies if the Secretary or the Secretary's Designee determines that the objectives of a fair and impartial hearing can best be served by doing so.
  - e. The Chairperson will advise the appellant, rater, reviewer and Appeal Committee, in writing, of the names of the members of the Appeal Committee, and the date, time and place of the appeal hearing.
  - f. At the appeal hearing the appellant may be represented by a person of their choice, and may call witnesses on their behalf who have relevant testimony.
    1. If legal counsel is retained, the appellant shall be responsible for any costs. If a Kansas Department of Labor (KDOL) employee represents the appellant, vacation leave must be requested as prescribed by agency policy.
    2. The appellant must provide a list of witnesses to the Chairperson at a specified date prior to the hearing. The appellant will be responsible for notifying those witnesses of the date, time and place of the appeal hearing. Employees are not required to be a witness if they choose not to do so.
  - g. The rater and reviewer may also call witnesses following the procedure described above.
  - h. The Appeal Committee shall consider any relevant evidence that may be offered by the employee, rater and reviewer, as well as any evidence it may secure on its own initiative. The Chairperson shall advise the appeal Committee, appellant, rater and reviewer of the guidelines for the conduct of the hearing. The Chairperson will also be responsible for the hearing proceedings.
  - i. Within fourteen (14) calendar days of the date the members of the Committee were appointed, the hearing must be completed and the Committee must prepare and sign the review rating for the employee.
  - j. The Committee will give the rating to the Secretary or the Secretary's Designee who will, within five (5) calendar days, transmit copies to the appellant, rater and reviewer, the Division of Personnel Services and the KDOL Human Resources Office. This rating is final and is not subject to further appeal.
  - k. If the Secretary or the Secretary's Designee is unable to appoint an Appeal Committee in the prescribed seven (7) calendar days, or if the Appeal Committee cannot make its rating within fourteen (14) calendar days of the date of appointment, the Secretary or the Secretary's Designee may extend these time limits.
5. Inquiries. Kyle Williams - Human Resource Office (785) 296-5000 ext. 2565

Lana Gordon, Secretary of Labor  
*Signature on file*

Rescissions: 300-01-05	Expiration Date: Continuous
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